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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **GABRIEL MUNOZ** **12469 Los Moras** **Victorville, California 92392** **Registered Nurse License No. 566484** Respondent.	Case No. 2010-111 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, MEd., RN ("Complainant") brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

Registered Nurse License

2. On or about April 26, 2000, the Board issued Registered Nurse License Number 566484 to Gabriel Munoz ("Respondent"). The registered nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2761 states, in pertinent part:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:

5. Code section 2762 states, in pertinent part:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
>
> (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
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> (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
>
> (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

6 Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

7. Code section 4022 states:

> "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
>
> (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

8. Health and Safety Code section 11173 states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the adminis-tration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

9. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11. **DRUGS**

"Ativan", a brand of lorazepam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(13), and a dangerous drug under Code section 4022 in that under federal or state law it requires a prescription.

"Dilaudid", a brand of hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K), and a dangerous drug under Code section 4022 in that under federal or state law it requires a prescription.

"Morphine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug under Code section 4022 in that under federal or state law it requires a prescription.

"Vicodin" is a compound consisting of 5 mg. hydrocodone bitartrate, also known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and 500 mg. acetaminophen per tablet and a dangerous drug under Code section 4022 in that under federal or state law it requires a prescription.

ST. MARY'S MEDICAL CENTER

FIRST CAUSE FOR DISCIPLINE

(Obtained, Possessed, Self-Administered and Furnished a Controlled Substance)

12. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that on or about March 20, through March 21, 2006, while on duty as a registered nurse at St. Mary's Medical Center, Apple Valley, California, Respondent committed the following acts:

a. Respondent obtained unknown quantities of the controlled substances, Dilaudid, Morphine, Ativan, and Vicodin by fraud, deceit, misrepresentation or subterfuge by taking the drugs from hospital supplies in violation of Health and Safety Code section 11173, subdivision (a).

b. Respondent possessed unknown quantities of the controlled substances Dilaudid, Morphine, Ativan, and Vicodin without a lawful prescription, in violation of Code section 4022.

c. Respondent self-administered unknown quantities of Dilaudid and/or Ativan, Morphine and Vicodin.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Used Controlled Substances)

13. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in that on or about March 21, 2006, Respondent used controlled substances (opiates) to an extent, or in a manner dangerous our injurious to others. Respondent tested positive for opiates while on duty as

a registered nurse at St. Mary's Medical Center, Apple Valley, California and was subsequently terminated by the medical center.

THIRD CAUSE FOR DISCIPLINE

(Inconsistent/Unintelligible Entries in Patient Records)

14. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (e), in that on or about March 20 through March 21, 2006, while on duty as a registered nurse at St. Mary's Medical Center, Apple Valley, California, Respondent falsified or made grossly incorrect, inconsistent or unintelligible entries in the following hospital and/or patient records:

Patient A[1]

a. On March 20, 2006, at 1530 hours, Respondent signed out 4 mg of Morphine from the Pyxis System[2] for this patient; however, Respondent failed to chart the administration or wastage of any portion of the Morphine in any patient or hospital record or otherwise account for the disposition of the drug.

Patient C

b. On March 20, 2006, at 0711 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient. Respondent charted the administration of 1 mg of Dilaudid in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of the remaining 1 mg of Dilaudid in any patient or hospital record or otherwise account for the disposition of the remaining 1 mg of Dilaudid.

c. On March 20, 2006, at 0858 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient. Respondent charted the administration of 1 mg of Dilaudid in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of the remaining 1 mg of Dilaudid in any patient or hospital record or otherwise account for the disposition of the remaining 1 mg of Dilaudid.

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[1] Initials are used to protect the privacy of the patients. The patients' full names will be provided following a request for discovery.

[2] Pyxis is a system for the automated dispensing and management of medications at the point of use in hospital settings.

Patient D

d. On March 20, 2006, at 1955 hours, Respondent signed out 10 mg of Morphine from the Pyxis System for this patient. Respondent charted the administration of 2 mg of Morphine, each time, at 1845 hours, 1850 hours, 1855 hours and 1955 hours in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of the remaining 2 mg of Morphine in any patient or hospital record or otherwise account for the disposition of the remaining 2 mg of Morphine.

Patient E

e. On March 21, 2006, at 0911 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the Dilaudid in any patient or hospital record or otherwise account for the disposition of any portion of the drug.

Patient F

f. On March 20, 2006, at 0741 hours, Respondent signed out 10 mg of Morphine from the Pyxis System for this patient. Respondent charted the administration of 4 mg of Morphine in the patient's administration record; however, Respondent failed to chart the administration or wastage of the remaining 6 mg of Morphine in any patient or hospital record or otherwise account for the disposition of the remaining 6 mg. of Morphine.

g. On March 20, 2006, at 1117 hours, Respondent signed out 4 mg of Morphine from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the Morphine in any patient or hospital record or otherwise account for the disposition of the drug.

Patient G

h. On March 21, 2006, at 1221 hours, Respondent signed out 4 mg of Dilaudid from the Pyxis System for this patient. Respondent charted the administration of 1 mg of Dilaudid in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of any portion of the remaining 3 mg of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient H

i. On March 20, 2006, at 1640 hours, Respondent signed out 10 mg of Morphine from the Pyxis System for this patient. Respondent charted the administration of 4 mg of Morphine in the patient's medication administration record and nurse's notes; however, Respondent failed to chart the administration or wastage of any portion of the remaining 6 mg of Morphine in any patient or hospital record or otherwise account for the disposition of the drug

j. On March 20, 2006, at 1840 hours, Respondent signed out 2 mg of Ativan from the Pyxis System for this patient. Respondent charted the administration of 1 mg of Ativan in the patient's medication administration record and nurse's notes; however, Respondent failed to chart the administration or wastage of any portion of the remaining 1 mg of Ativan in any patient or hospital record or otherwise account for the disposition of the drug.

Patient I

k. On March 21, 2006, at 0908 hours, Respondent signed out 1 Vicodin tablet from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of the Vicodin tablet in any patient or hospital record or otherwise account for the disposition of the drug.

Patient J

l. On March 20, 2006, at 0748 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the 2 mg of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

COMMUNITY HOSPITAL OF SAN BERNARDINO

FOURTH CAUSE FOR DISCIPLINE

(Obtained, Possessed, Self-Administered and Furnished a Controlled Substance)

15. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that on or about April 27, 2005, through May 5, 2005, while on duty as a registered nurse at

Community Hospital of San Bernardino, San Bernardino, California, Respondent committed the following acts:

a. Respondent obtained unknown quantities of the controlled substances Dilaudid and Morphine by fraud, deceit, misrepresentation, or subterfuge by taking the drugs from hospital supplies in violation of Health and Safety Code section 11173, subdivision (a).

b. Respondent possessed unknown quantities of the controlled substances Dilaudid and Morphine without a lawful prescription, in violation of Code section 4022.

FIFTH CAUSE FOR DISCIPLINE

16. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (e), in that on or about April 27, 2005, through May 5, 2005, while on duty as a registered nurse at Community Hospital of San Bernardino, San Bernardino, California, Respondent falsified or made grossly incorrect, inconsistent or unintelligible entries in the following hospital and/or patient records:

Patient No. 050

a. On May 2, 2005, at 0124 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient. Respondent charted the administration of 1 mg of Dilaudid in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of any portion of the remaining 1 mg. of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 775

b. On April, 30, 2005, at 2027 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 896

c. On May 2, 2005, at 0131 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient. Respondent charted the administration of 1 mg of Dilaudid in the

patient's nurse's notes; however, Respondent failed to chart the administration or wastage of any portion of the remaining 1 mg. of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 734

d. On April 30, 2005, at 2235 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the 2 mg. of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 979

e. On May 2, 2005, at 0259 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient. Respondent charted the administration of 0.5 mg of Dilaudid in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of any portion of the remaining 1.5 mg. of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 114

f. On April 30, 2005, at 0453 hours, Respondent signed out 10 mg of Morphine from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the 10 mg of Morphine in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 113

g. On May 1, 2005, at 0703 hours, Respondent signed out 2 mg of Dilaudid from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage of any portion of the 2 mg of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 965

h. On May 1, 2005, at 0350 hours, Respondent signed out 10 mg of Morphine from the Pyxis System for this patient; however, Respondent failed to chart the administration or wastage

of any portion of the Morphine in any patient or hospital record or otherwise account for the disposition of the drug.

Patient No. 631

i. On May 1, 2005, at 2159 hours and 2335 hours, Respondent signed out 2 mg of Dilaudid each time from the Pyxis System for this patient. Respondent charted the wastage of 1 mg of Dilaudid at each time interval at 2335 hours and 2336 hours. Respondent charted the administration of 1 mg of Dilaudid in the patient's medication administration record; however, Respondent failed to chart the administration or wastage of any portion of the remaining 1 mg. of Dilaudid in any patient or hospital record or otherwise account for the disposition of the drug.

EAST VALLEY HOSPITAL MEDICAL CENTER

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Used Controlled Substances)

17. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in that on or about April 24, 2005, Respondent used controlled substances to an extent that such use impaired his ability to practice safely. Respondent tested positive for opiates, barbiturates, and benzodizapines while on duty as a registered nurse at East Valley Hospital Medical Center, Glendora, California and was subsequently terminated by the medical center.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 566484, issued to Gabriel Munoz;

2. Ordering Gabriel Munoz to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/28/09

Louise R. Bailey

LOUISE R. BAILEY, MEd., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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